Supreme Court, U.S.
FILED
FEB 15 1989
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SUPREME COURT OF THE UNITED STATES

No. 88-1019 (7)

OCTOBER TERMS, 1988

HERBERT D. BERKSON,

Petitioner

v.

DEL MONTE CORPORATION, ET AL,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT

REPLY BRIEF OF PETITIONER

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14 pp

Other Defendant Parties

United Brands Company, William A. Rogers, Henry A. Kissinger, Price Waterhouse, Palmer & Dodge, Goodwin Procter & Hoar, Pillsbury, Madison & Sutro, Covington & Burling and Nathaniel Davis

REPLY BRIEF OF THE PETITIONER

The petitioner hereby responds to the briefs in opposition to his petition for a writ of certiori.

Brief In Opposition of Respondents, Palmer & Dodge and Pillsbury, Madison & Sutro.

On page 2:

> "In the lawsuit now before the Court petitioner sued United Brands, Del Monte Corporation, Henry Kissinger and a host of other defendants, including the law firms of Palmer & Dodge and Pillsbury, Madison & Sutro. Petitioner claims a 'Bananagate' conspiracy involving 'rogue' elements of the CIA, 'Mafia hit men' and the threat of assassination from the CIA itself.' .....(e.g., 'CIA disguises for Col. Oliver North,' 'Iran arms deal: the aftermath'."

The crude attempts at ridicule and jest by the counsel for Palmer & Dodge and Pillsbury, Madison & Sutro ironically enough underline and buttress the tragic happenings in our nation's capitol today, (e.g., the "Contragate" trial of Col. Oliver North). "Bananagate" and "Contragate" are inexorably linked, the one serving as the breeding ground and forerunner for the other. The petitioner

has steadfastly maintained that he has been victimized by the CIA and other elements of the American intelligence community in their questionable efforts to protect and shield the security of the United States. The petitioner is in strong accord with the mandate and purpose of the CIA, but not when its questionable activities deprive him of his property rights which are guaranteed by the Constitution of the United States.

The First Circuit Court of Appeals has sent a subliminal message to the Supreme Court in this matter by allowing a certain article that appeared in the Boston Globe on August 13, 1988, and is abstracted on pages 10-12 in his brief petitioning for certiorari. This Thomas Boylston Adams' article, tracing the covert activities in Central America of the intelligence community was considered sufficiently significant by the First Circuit Court of Appeals for it to forego its normal procedure of not receiving new evidence. There must have been a compelling reason for the First

Circuit to circumvent its own modus operandi.

This is mere conjecture on the petitioner's part, but he is of the opinion that because of the enormity of the "Contragate" matter with its roots intertwined around the very bedrock of the republic itself, the First Circuit Court of Appeals fearing that it might make the wrong decision in the petitioner's "Bananagate" matter, decided to let the matter go to the Supreme Court for the final decision so that there wouldn't be any conflicting decisions between "Contragate" and "Bananagate" at the Supreme Court level. In other words, let the Supreme Court make the ultimate decision on the petitioner's "Bananagate Affair".

The Supreme Court should grant the petitioner certiorari so that the facts of this matter, along with his allegations, can be heard in a public courtroom and not be hidden from the public view and scrutiny by the manipulations of these defendant attorneys as they lockstep from authority to authority

in their efforts to hoodwink and blind the Court by fallacy. Meaningless technicalities in the law are cited in a desperate effort by the private attorneys in this matter, along with the Government lawyers to conceal the truth. Is it not in the public interest as well as the petitioner's self-interest to bend a restrictive rule womewhat so that the truth can be arrived at? The public has a right to know and deeply scrutinize the covert activities of the CIA, NSC and the NSA in light of the fact that the Justice Department is attempting to subvert the public trial of Colonel Oliver North and the "Contragate" affair. The petitioner's "Bananagate" matter may be the only alternative that the public might have to investigate the inner workings of the intelligence community and the threats to the national interests that are embodied in the shadow, secret government of the Meeses and William Caseys that Colonel North testified to during the Senate Iran/Contra hearings.

The public must not be denied the opportunity to deeply scrutinize this secret government that might lead the American people down the path to totalitarianism. If the public is denied the opportunity to investigage this shadow government in the "Contragate" trial of Colonel North, if the Justice Department and the intelligence community has its way, then the only plausible alternative is for the Supreme Court to grant certiorari to the petitioner and let the inner workings of the CIA, NSA and NSC be aired out during his trial.

Brief in Opposition of the Respondent, United Brands Company.

On page 8

"Berkson raises for the first time in his Petition for Certiorari alleged violations of the Anti-Deficiency Act (the "Act"), 31 USC, Sect. 1341, et seq."

The petitioner states that this Anti-Deficiency Act violation was called to the attention of the Clerk of the First Circuit Court of Appeals with the request that he place the letter in the file of the panel con-

sidering the case. The counsel for respondent Covington & Burling also submitted to said panel a letter denying their violations of the Anti-Deficiency Act. The petitioner being pro se in this matter and not knowing all the proper professional legal language and procedures just did the best he could in bringing the matter to the attention of the First Circuit Court of Appeals.

On page 11a

"However, the Court of Appeals found that Berkson did not use due diligence in discovering the facts underlying his antitrust cause of action."

The petitioner states unequivocally that he did, in fact, use due diligence to substantiate his suspicions in the prior antitrust action, but the First Circuit Court of Appeals refused to reconsider its position when the petitioner called to its attention the proof of his due diligence and the proof of DelMonte's fraudulent concealment that rests in the record to this very day.

This proof is contained in an affidavit

of DelMonte's counsel in the prior antitrust action. Said counsel, Laurence M. Johnson, of Palmer & Dodge, admitted that on two occasions the petitioner accompanied by attorneys Francis Kenney and Samuel Angoff met with Attorney Johnson in Boston and confronted him with unconfirmed information and suspicions of DelMonte's wrongful acts in mid-1975, well within the parameters of 1972-1976 that DelMonte claimed was the statute of limitations in the antitrust matter. Mr. Johnson denied that his client was involved in any wrongdoing. This denial constituted fraudulent concealment by DelMonte and its counsel. Furthermore, Mr. Johnson made a gratuitous, reckless and perjurious statement, that the Court of Appeals was unwilling to recognize ... namely, that DelMonte never committed wrongful acts in Guatemala in 1972 and no proof ever existed that it did commit these acts. This perjurious statement, as well as DelMonte's corporate counsel, James

Crittenden's false statement in an interrogatory filed in June 18, 1981, were disclosed in DelMonte's internal documents produced by Court Order in May 1983. This was the first time the petitioner had the documentary and unrefuted proof of DelMonte's and its attorneys' guilt and fraudulent concealment. The Supreme Court's holding in Agency Holding, therefore, establishes the statute of limitations in this RICO matter as May 1983 to May 1987 and not as the Appeals Court established as September 1979 to September 1983. The First Circuit of Appeals, therefore, erred monumentally. If the petitioner had brought this suit at the time DelMonte and the First Circuit demanded in the order of June 29, 1988, the case would have been thrown out on summary judgment as it would have been based on mere unsubstantiated suspicions and hearsay with no evidence to support this suspicions.

Furthermore, the Appeals Court is countenancing perjury on the part of DelMonte

and its attorneys Johnson and Crittenden instead of turning the matter over to the US Attorney's Office for investigation and action if need be.

This RICO action was filed on September 26, 1986, well within the true statute of limitations of May 1983 to May 1987, as established by Agency Holding. Please see . ....

Brief In Opposition of the Respondent, Goodwin, Procter & Hoar.

On page 5 (footnote 5)

> "The current Petition refers to a May 1983 document production made during Berkson II by Palmer & Dodge on behalf of DelMonte.....Petitioner does not maintain that prior to May 1983 he was ignorant of his alleged injury.....Under such circumstances, it is not the rule that a statute of limitations is tolled until such time as the plaintiff's suspicions ripen during discovery."

The above statement made by Procter & Hoar in defense of itself and United Brands is another attempt by the defendant attorneys, acting as agents and surrogates of rogue elements of the Justice Department and the

American intelligence community, to hoodwink, mislead, snooker and euchre the Supreme Court with its legalistic and disingenuous leger-demain. The petitioner reiterates that without substantiating smoking-gun proof of DelMonte's wrongdoing obtained in DelMonte's internal documents of May 1983, his case would have been thrown out and he would have been sanctioned by the Court under Rule 11 for bringing a frivolous, meritless and vexatious action despite the efforts of defendant attorneys to blind the Supreme Court as they have been successful in accomplishing in the lower Courts.

Their actions are despicable and unacceptable, particularly at this time of the "Contra-gate" trial of Col. Oliver North. These defendant lawyers acting for themselves and the intelligence community are smokescreening from the public and the Supreme Court frightening facts that should rightfully be exposed. As officers of the Court, these defendant attorneys are

required to be honest, direct and candid with the tribunal, and they are not.

It should be abhorrent to all American citizens that the United States Department of Justice can be politically compromised and do the bidding of the special interest groups and power blocs that abound in the United States to the detriment of the public interest. The Justice Department as a co-conspirator in this "Bananagate Affair" should be rather committed to pursuing justice wherever it leads, even if the consequences are troubling. Over the long haul, only that approach will ensure that our true national security, which is largely dependent upon the integrity of our government institutions is protected.

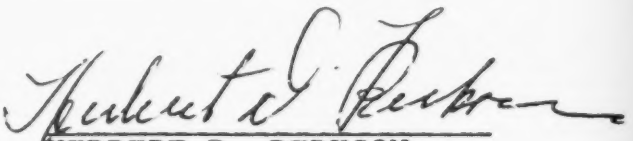
Respectfully submitted,

Herbert D. Berkson,
Petitioner (Pro-Se)

Dated: February 14, 1989

CERTIFICATE OF SERVICE

I, Herbert D. Berkson, hereby certify that on the 14th day of February 1989, I served three (3) copies of the within and foregoing Reply Brief of Petitioner upon all counsel fo record and the Solicitor General.



HERBERT D. BERKSON